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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ARNOLD W. KLEIN,

Plaintiff and Respondent,

v.

STEVEN HOFFLIN,

Defendant and Appellant.

B223353

(Los Angeles County
Super. Ct. No. BC421181)

APPEAL from an order of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed in part and reversed in part with directions.

Horvitz & Levy, Jeremy B. Rosen, Felix Shafir; Early, Maslach & Van Dueck, John Tasker and Nancy Matthews Garber for Defendant and Appellant.

Miller Barondess, Louis R. Miller and Mira Hashmall for Plaintiff and Respondent.

INTRODUCTION

Defendant Steven Hoefflin, M.D. (Hoefflin) appeals from an order denying his special motion to strike (Code Civ. Proc., § 425.16)¹ and allowing this action by plaintiff Arnold W. Klein, M.D. (Klein) to proceed. We affirm the order in part and reverse it in part.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Klein's Complaint*

Klein filed his complaint on September 14, 2009, alleging causes of action for slander (first), trade libel, unfair competition, intentional and negligent infliction of emotional distress, and false light (second through sixth). Klein alleged that he was “a world renowned and respected Dermatologist.” His “practice includes cosmetic dermatology, which is an alternative to cosmetic surgery.” He “has been credited as a pioneer in the use of collagen and botox and has been called the ‘king of collagen’ and has been said to be responsible for ‘putting botox on the map.’”

Klein, who practices in Beverly Hills, has many wealthy and high profile patients, “including numerous celebrities. He is known as the Dermatologist to the Stars.” In addition, he “has been a highly sought after publisher of medical articles, presenter and lecturer.” His “stellar reputation as a physician in the area of cosmetic dermatology,” his skill and his work in this area have enabled him “to attract high-end, well-established celebrity patients.”

¹ A special motion to strike is also known as an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion. A SLAPP is intended to chill the exercise of the right of free speech or the right to petition the government for redress of grievances. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055.)

It had been “widely reported and known” that Klein had been Michael Jackson’s (Jackson) dermatologist for a long time. He and Jackson were close friends as well.

Klein further alleged that he and Hoefflin were “competitors in a highly specialized and elite field which caters to a very exclusive clientele.” They catered to similar patients and had shared a few patients. Hoefflin had previously been one of Jackson’s doctors, reportedly between 1978 and 2002.

Jackson died on June 25, 2009. The Los Angeles Coroner’s office investigated the cause of death and on September 1, 2009 released a statement indicating that Jackson died of acute propofol intoxication, with a contributing condition of benzodiazepine effect. The death was ruled a homicide.

After Jackson’s death, there was “a media frenzy around the world regarding the life of Michael Jackson and the facts, circumstances and cause of his death. This media frenzy unfortunately has provided a number of individuals with a ‘stage’ to get their ‘fifteen minutes of fame’ and to broadcast and publish a number of untrue and baseless allegations against various individuals, including Dr. Klein.”

According to the allegations of the complaint, “[o]ne of the central individuals inserting himself into the media circus [was] Hoefflin. Soon after the death of Michael Jackson, Hoefflin claimed that he was an authorized spokesman of Katherine Jackson and that he was also working on a book with her. Hoefflin used this purported cache [*sic*] to garner interviews with various media outlets.”²

Klein alleged that “Hoefflin also made libelous, slanderous and other statements about Dr. Klein.” On July 24, 2009, Klein’s counsel sent an email to Hoefflin, demanding that he “‘immediately agree to retract all false information which you have disseminated about Dr. Klein and not to publish any further such false statements.’” However, Hoefflin continued to make such statements. On August 26, 2009, Hoefflin was interviewed by reporter David Willetts of The Sun. In the interview, Hoefflin “stated

² The complaint also alleged that Hoefflin was not, in fact, authorized to speak on behalf of Katherine Jackson or Michael Jackson’s estate.

that in the minutes following Michael Jackson's death that: '[Dr. Conrad] Murray definitely called Klein because Klein taught him how to administer Propofol.' Hoefflin continued that 'Murray would have counted on Klein to be the source of Propofol and guide him in its use.'"

Klein alleged that the foregoing statements were false and unprivileged, and Hoefflin failed to use reasonable care in determining the truth or falsity of the statements. "Worse yet, at the time Hoefflin made the [statements], he knew . . . those statements were false and/or had serious doubts about the truth of those statements."

The complaint went on to allege the ways in which Klein was damaged by the statements, both personally and professionally.

B. Hoefflin's Demurrer and Anti-SLAPP Motion

Hoefflin responded with both a demurrer and an anti-SLAPP motion. The demurrer basically was based on a failure to state facts sufficient to constitute a cause of action. He also claimed there was no independent tort of negligent infliction of emotional distress and the cause of action for false light was duplicative of the causes of action for slander and trade libel.

In his anti-SLAPP motion, Hoefflin claimed the anti-SLAPP statute applied, in that the alleged defamatory statements arose from an act in furtherance of his right of free speech, and they were made in a public forum in connection with an issue of public interest. The focus of his motion, however, was his argument that Klein could not establish a probability of prevailing on the merits of his complaint.

C. Klein's Opposition

In opposition to Hoefflin's motion, Klein presented the following evidence:

According to the declaration of Klein's attorney Richard L. Charnley (Charnley), he witnessed Klein's July 8, 2009 appearance on "The Larry King Show." Klein talked about Jackson's plastic surgeries and talked generally about management of prescription

drugs in the United States. He did not name any other physicians involved in Jackson's treatment or make references that would allow anyone to identify any other physician.

Charnley included with his declaration copies of articles in The Sun. One on July 15, 2009 stated: "MICHAEL Jackson's skin doctor is under investigation over the singer's death, it was announced yesterday. [¶] Assistant Chief Coroner Ed Winter barged into Dr Arnold Klein's office to seize medical records – as the doc told of 'rebuilding' the star's face. [¶] Cops will probe the dermatologist's prescription practices with regard to the vast amount of drugs Jacko was taking. They will investigate whether medication was given to aliases. [¶] Dr Klein admitted 'occasionally' giving him sedative Demerol, but said: 'That was the strongest medication I ever used.'"

A July 17 article spoke about the continuing investigation, noting that "Jackson was at the centre of a complex web linking Hollywood's rich and famous and the doctors who catered to them." The article again mentioned the investigation of Klein, and it spoke about Klein's links to other celebrities.

In a July 24 article, the paper stated: "The Sun has seen proof that Dr Klein treated Jacko with vast amounts of the painkiller Demerol. [¶] They show his first major battle with drug addiction occurred shortly after the doc treated him with FOUR TIMES the daily maximum recommended amount of the drug. [¶] Jacko's ex-plastic surgeon and friend Dr Steven Hoefflin said the evidence from Klein's 1993 files was 'horrifying reading'. He said: 'I had no idea Michael was being given this insane amount of Demerol.'" Hoefflin also stated: "'I feel Dr Klein was overtreating him to make money. I have launched a lawsuit against Dr Klein for fraud. It is my opinion that he got my patient addicted to Demerol.'"

Also on July 24, Bonnie Tiegel (Tiegel) of CBS Paramount forwarded to Charnley a statement by Hoefflin talking about all the work he was doing for Katherine Jackson to dispel the rumors about her son. Later that day, Tiegel forwarded to Charnley a July 22 letter from Hoefflin to Klein. She stated that she "wanted you to see this and I'm looking for a response or even an on camera interview."

The letter stated that before Jackson's death, Jackson had asked Klein to send Hoefflin a copy of Jackson's medical records. The records "were reviewed and are now in the hands of the Los Angeles Police Department." According to Hoefflin, in Klein's writing and public statements was evidence that Klein committed numerous crimes and misdeeds, including ruining Jackson's health; causing Jackson to be addicted to pain medication and preventing him from entering a drug rehabilitation program; administering intravenous Diprivan³ to Jackson in Klein's office and instructing others to unsafely administer intravenous Diprivan; and contributing to Jackson's death. The letter also included allegations that Hoefflin had heard "[f]rom a very reliable source" regarding Klein's health and suggested Klein "may have" exposed his patients to illness.

According to the declaration of Bradley P. Boyer (Boyer), another of Klein's attorneys, on July 24, 2009, he sent an email to Tiegel in response to the July 22 letter. Boyer informed Tiegel that the letter contained false statements, and it would cause severe harm to Klein if broadcast. He warned that if she published the letter or its contents, the publication "would be done with malice and with a reckless disregard for the truth." Additionally, there were matters in the letter which were not of public concern, and it was established that Klein was not a subject of the coroner's investigation.

Boyer also sent a similar letter to Hoefflin. Hoefflin responded by suggesting that they meet to review the evidence Hoefflin had in his possession. Hoefflin also invited Klein to sit down with him "and be interviewed openly covering his medical records and other materials in my possession." He added that he had proof that statements Klein made on the Larry King show were false.

Hoefflin sent a copy of his email to his attorneys. Boyer contacted the attorneys on July 24 to determine whether they were representing Hoefflin and whether Boyer should be contacting them directly. Boyer also asked if Hoefflin was authorized to speak on behalf of the Jackson family or estate, and he advised the attorneys that Klein would

³ Diprivan is the brand name for propofol. (AstraZeneca Global <http://www.astrazeneca.com/Medicines/Neuroscience/Product/Diprivan.>)

not be doing any interviews at that time. Finally, Boyer informed the attorneys that Klein was asking Hoefflin not to make any more comments about him in the media.

On August 26, The Sun ran an article which read: “MICHAEL Jackson’s doctor Conrad Murray was accused last night of spending 47 minutes phoning another medic, a lawyer and a mystery associate after the star stopped breathing. [¶] Panicking Murray rang fellow doc Arnold Klein for advice on what to do as Jacko lay dying. [¶] He also allegedly called a LAWYER before finally telling a security guard to dial 911 and summon paramedics to the star’s Los Angeles home. [¶] Both Murray and Klein are being investigated by police over their role in Jacko’s death, which is being treated as homicide. [¶] Murray has claimed he tried to revive the star, but leaked court papers reveal he spent 47 minutes making three separate phone calls around the time Jacko died.

“And last night Dr Steven Hoefflin – who treated Jacko for 25 years – said: ‘Murray definitely called Klein because Klein taught him how to administer propofol. [¶] ‘There were two in-state calls then one out-of-state. He was calling an attorney – he had to because Michael was dead. He tried to cover it up by telling everyone Michael had a weak pulse, but Michael was dead.’ [¶] Lethal Dr Hoefflin, 63, a respected plastic surgeon who is carrying out his own probe into Jacko’s death, added: ‘Murray would have counted on Klein to be the source of propofol and guide him in its use.’ [¶] Skin specialist Klein is being probed for giving potentially lethal prescription drugs to addict Jacko.”

On September 15, 2009, Hoefflin sent Boyer a copy of an authorization for release of medical records purportedly signed by Michael Jackson in 1999. He also sent a copy of a letter purportedly signed by Katherine Jackson on July 18, 2009 authorizing Hoefflin “to stop & correct the bad rumors about my son Michael Jackson. He may talk with the Sun Newspaper.”

Boyer wrote to The Sun the following day, informing them of the lawsuit. He wrote: “Yesterday, Hoefflin represented to the media: [¶] ‘They [The Sun] check their facts with an electronic microscope. There is factual evidence that the statements that I made are true. They have in their possession phone records, recordings, documents and

other evidence that confirms facts in their stories before they're published.'" Boyer demanded "that The Sun immediately provide this firm with all 'factual evidence' supporting Dr. Hoefflin's claim that The Sun is in possession of phone records, recordings and documents purportedly showing that Conrad Murray 'definitely called Klein' on the day of Michael Jackson's death." The Sun notified Boyer that it was sending his letter to the appropriate department.

Later that day, Hoefflin sent a three-page statement to Boyer. It was headed: "***I am personally going to put a stop to all of the threats on my life and the threats against my family.***" He wrote that he was "now bringing out to the public all of the credible evidence in my possession on the corruption in Los Angeles Law Enforcement pertaining to the Michael Jackson Investigation." He was going to stop threats against him and his family by law enforcement, stop them from obstructing his independent investigation into Jackson's death and reveal the truth to the public. He claimed to have requested a congressional investigation of the matter.

Hoefflin continued, "In reference to yesterday's lawsuit filed against me by Dr. Arnold Klein, I am established Government Witness in the Michael Jackson Death Investigation. It is my clear opinion that Dr. Arnold Klein and his attorneys are attempting to prevent me from discussing incriminating evidence that I possess on Dr. Klein. They know that I have provided this evidence to the authorities. They also know that credible, incriminating evidence is going to be shortly released in my book. In my opinion and that of others, they desperately want me to stop any further investigation and to stop providing the public and the authorities the evidence that I acquire."

After additional accusations, Hoefflin stated that he had contacted the state Attorney General, whom he expected would "put a stay on this lawsuit because he would never allow a court to proceed in an action that would obstruct one of their primary witnesses (myself) in a federal investigation." Hoefflin stated that he expected the Attorney General to open an additional investigation into the "probable felonies" he had named. He also believed he had "a legal standing to bring a lawsuit against all of them, which I certainly will, for possible felonies committed against me." Finally, he stated, "I

am going to start providing the media and Michael Jackson's fans all of the evidence that I have involving the Michael Jackson Death Investigation, the Corrupt Los Angeles Law Enforcement, and others colluding together to obstruct Justice."

Later that evening, Hoefflin sent Boyer another letter "[i]n reference to Dr. Klein's criticism of the SUN." He reiterated that he had Katherine Jackson's authorization "to talk about Michael Jackson during my independent investigation into his death." They agreed to release the evidence he obtained to The Sun. In response to Klein's claim that records in The Sun's possession showing that Murray called Klein were false, he stated: "I know that one of those individuals that Dr. Murray called during those 47 minutes was indeed Dr. Klein." He accused Klein and other doctors of writing illegal prescriptions for Jackson "and taking a tremendous amount of cash for it."

Hoefflin added: "The claim that I am hurting his practice is preposterous. He is hurting it himself for what he did to Michael Jackson and his not being cooperative with the investigators." Hoefflin believed that "[o]nce Dr. Klein is arrested and indicted for contributing to Michael's death," he would be judged for his actions. Hoefflin offered again to sit down with Klein and his attorneys to go over the evidence he had gathered against Klein. Hoefflin later wrote to Boyer stating that he could quote the letter.

On September 18, 2009, Boyer received a copy of a letter Hoefflin sent to Dean Hansell, in response to a letter Hansell sent to Hoefflin. Hansell's letter stated that Boyer had contacted him to confirm whether Hoefflin was authorized to speak for Katherine Jackson. He responded that Katherine Jackson did not want to be involved in the controversy and she had requested that Hoefflin "not make any statements or representations on her behalf or invoke her name in any respect."

Hoefflin's response was that he had "a lot of experience prevailing in litigation against attorneys, I will continue, and therefore I am not intimidated." Hoefflin again referred to his work with the Attorney General on the investigation of Michael Jackson's death. He referred to collusion between Klein and his attorneys to use "a document known to contain false facts in order to file a frivolous lawsuit." He reiterated that he had Katherine Jackson's permission to investigate and talk about the death. He claimed to be

preparing a cross-complaint and suggested that Klein find new defense counsel, as his current counsel was guilty of legal malpractice.

Klein stated in his declaration that he had never met or spoken to Murray. He never provided propofol to Murray or anyone claiming to act on his behalf. Klein never instructed Murray or anyone claiming to act on his behalf on how to administer propofol.

According to Klein, on the day Jackson died, Klein was working with patients. He received no telephone calls from Murray or anyone claiming to act on his behalf. His office manager, Jason Pfeiffer (Pfeiffer) was fielding all his telephone calls, and Pfeiffer was the one who told him about Jackson after a patient called the office with the news.

Pfeiffer explained in his declaration that Klein's office switchboard did not refer incoming calls to Klein but the calls went first to Pfeiffer. When Klein was working, Pfeiffer answered calls on Klein's cell phone. Pfeiffer never received a call from Murray or anyone claiming to be from Murray's office. "More specifically, any statement that Conrad Murray or anyone claiming to be calling on behalf of Conrad Murray spoke to, or called, Dr. KLEIN on the morning that Michael Jackson died is false. I received no such calls and I have personal knowledge that Dr. KLEIN, who spent the entire morning with patients, took no such calls."

According to Klein, because he and Hoefflin both provide cosmetic medical treatment, they had occasionally cross-referred patients and worked together. They ended their professional relationship several years earlier for reasons Klein did not want to discuss. They were now essentially competitors.

Klein did not know why Hoefflin "holds the malice for me that he manifested by stating publically [*sic*] that I was instrumental in providing the medication that caused Michael Jackson's death." He speculated it may have been due to a television program on the two doctors which "placed responsibility for issues with Michael Jackson's appearance on" Hoefflin. It might also have been that Hoefflin blamed Klein for Jackson's decision to stop cosmetic surgery and no longer use Hoefflin's services.

D. Hoefflin's Reply

In his reply, Hoefflin submitted his own declaration. He denied that he was in competition with Klein, explaining that due to injury he had not been actively practicing since 2008. He and Klein had a “falling out” in 2002, when Klein advised Jackson not to enter a drug rehabilitation program.

Hoefflin noted his offer to discuss the issues with Klein after receiving the letter accusing him of defamation. He stated: “Clearly there was no malice intended [*sic*] by this offer. [Klein] refused to meet with me.”

According to Hoefflin, Jackson, “in addition to being my former patient, was a dear friend of mine for over 33 years.” Hoefflin had permission from Jackson and his mother “to discuss Michael and his medical care.” Shortly after Jackson’s death, Hoefflin spent time with the Jackson family, and “Katherine Jackson requested that I commence and report my findings in a private investigation into Michael’s death.” Katherine Jackson “requested that I talk with the SUN Newspaper. She was familiar with what was believed to be the U.K.’s high bar for defamation and slander and it’s [*sic*] history of unrelentless [*sic*] fact checking.”

Three journalists from The Sun and their editor told Hoefflin “that there were phone records in their possession indicating that Dr. Murray had called Dr. Klein on June 25, 2009 prior [to] Michael’s Death. I was also told that Dr. Klein was one of the doctors who showed Dr. Murray how to administer Propofol. I had no reason to doubt the veracity of what they said especially in light of the ongoing investigation of Dr. Klein by the Los Angel[e]s Police Dept. I was further advised that they had turned over this information to the police.”

Hoefflin believed Klein “was involved in the administration of propofol and other narcotics to Michael” based on his review of Jackson’s medical records; his interviews with over 100 people in his investigation of Jackson’s death; media reports regarding the dangerous amounts of drugs being given to Jackson. It was Hoefflin’s “belief based on reports in the media and Dr. Klein’s interviews that while treating Michael Jackson he or someone at his direction, used Demerol, propofol and tranquilizers on Michael Jackson.”

The media reports on which Hoefflin relied, attached to his declaration, included online reports from TMZ, Radaronline.com, The Daily Beast, People and Reuters. Many of these reports postdated the August 26 report in The Sun. In reports prior to August 26, TMZ reported that Jackson had been seeing Klein; Klein had failed to fully comply with the coroner's request for Jackson's medical records; some of Klein's files on Jackson contained an alias which Jackson used to obtain drugs; Klein admitted giving Jackson Demerol and was aware that Jackson was using propofol and had warned Jackson of its dangers; Jackson's family was suspicious of a number of his doctors, including Klein; in 1993, Debbie Rowe, who worked for Klein, gave Jackson injections prior to acne treatment; a clinic in Beverly Hills where Klein had performed surgeries several years earlier was being investigated by the coroner; and Klein performed minor acne treatment on Jackson under full anesthesia, which may have been propofol. Radaronline.com reported that Jackson visited Klein a week before his death. The Daily Beast reported that Klein was forced to leave his residency in Pennsylvania for selling unauthorized prescriptions, was being investigated in connection with Jackson's death, and Charnley failed to respond when given the opportunity to rebut these allegations.

E. *The Trial Court's Ruling*

On the anti-SLAPP motion, the trial court agreed "that the language that forms the basis for this action is protected speech covered by the anti-SLAPP statute." However, the court denied the motion on the basis that Klein "has made a *prima facie* showing of admissible evidence sufficient to survive the motion."

Specifically, the trial court "agree[d] with Klein that Hoefflin's alleged statements to *The Sun* are actionable because they convey a defamatory innuendo suggesting that Klein played a role in causing Jackson's death or engaged in conduct that fell below a physician's standard of care. [Klein] has submitted admissible evidence that the statements are false, i.e., that he had no telephone conversations with Murray when Jackson died. He also has submitted a July 22, 2009 letter in which Hoefflin, *inter alia*,

asserts that Klein improperly administered various medications, ‘ruined Michael’s health,’ ‘fraudulently took his wealth’ and ‘contributed to the Death of Michael Jackson.’

“On July 24, 2009, Klein’s attorney, Bradley Boyer, sent a letter to Hoefflin . . . informing him that these statements were false and that any further publication of the statements would constitute malice. The gist of the statements in Hoefflin’s letter is essentially the same as Hoefflin’s alleged statements to *The Sun*. Both convey the defamatory innuendo that Klein improperly prescribed medications and contributed to Jackson’s death. By submitting evidence that Hoefflin was on notice that these statements were false, [Klein] has offered sufficient circumstantial evidence to make a *prima facie* case of actual malice and/or negligence.”

The trial court overruled Hoefflin’s demurrer as to the cause of action for slander. While it ruled on the demurrer as to the other causes of action, it struck the remaining causes of action on its own motion under Code of Civil Procedure section 436. It explained that “The Uniform Publications Act, Civil Code Section 3425.3, only permits one cause of action ‘for libel or slander or invasion of privacy or any other tort’ for each allegedly defamatory utterance or publication. . . . To the extent that these additional causes of action rest on the same allegedly false statements, they are improperly pled.” The court granted Klein leave to amend, however. Klein subsequently filed a first amended complaint.

DISCUSSION

A. The Anti-SLAPP Statute

Code of Civil Procedure section 425.16 (section 425.16) provides that “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. [¶] . . . In making its

determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (*Id.*, subds. (b)(1), (b)(2).)

In determining whether an anti-SLAPP motion should be granted, the court engages in a two-step process. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) First, it determines whether the defendant “has made a threshold showing that the challenged cause of action is one ‘arising from’ protected activity.” (*City of Cotati, supra*, at p. 76; *Drum v. Bleau, Fox & Associates* (2003) 107 Cal.App.4th 1009, 1018, disapproved on another ground in *Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1065.) If so, then it must determine whether plaintiff has shown a probability of prevailing on his claim. (*City of Cotati, supra*, at p. 76; *Drum, supra*, at p. 1018.)

On appeal, we review the trial court’s determination de novo. (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1055.) The questions are whether the defendant has satisfied his burden of establishing that section 425.16 applies (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999) and “whether the plaintiff [has] satisfied [her] burden of making a prima facie showing of facts that, if proven at trial, would support a judgment in [her] favor.” (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 184).

Here, there is no dispute that Hoefflin met his burden of establishing that section 425.16 applies. The question is whether Klein then satisfied his burden of showing a probability of prevailing at trial.

B. Defamation

“The tort of defamation ‘involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.’ [Citation.]” (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.) Slander, a form of defamation (Civ. Code, § 44, subd. (b)), “is a false and unprivileged publication, orally uttered,” which damages a person. (*Id.*, § 46.) In addition, where the plaintiff is a public

figure, he or she must prove actual malice on the part of the defendant. (*Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1162.)

Here, there is no dispute that the publication at issue was defamatory. There is no dispute that Klein was at least a limited public figure, i.e., a person who “‘voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.’ [Citation.]” (*Annette F. v. Sharon S., supra*, 119 Cal.App.4th at p. 1163.) Hoefflin’s claim is that Klein failed to make a prima facie showing of actual malice and thus did not establish a probability of prevailing at trial. Thus, we only address this issue. (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699.)

C. Actual Malice

In determining whether the plaintiff has established a probability of prevailing at trial, the court must consider the applicable burden of proof. (*Annette F. v. Sharon S., supra*, 119 Cal.App.4th at pp. 1166-1167.) “A public figure suing for [defamation] must therefore establish a probability that [he or] she will be able to produce clear and convincing evidence of actual malice. [Citations.] ‘The clear and convincing standard requires that the evidence be such as to command the unhesitating assent of every reasonable mind. [Citation.]’ [Citation.]” (*Id.* at p. 1167.)

To show actual malice, the plaintiff must show “that the allegedly false statement was made ‘with knowledge that it was false or with reckless disregard of whether it was false or not.’ [Citation.] The reckless disregard standard requires a ‘high degree of awareness of . . . probable falsity . . .’ [Citation.] ‘There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.’ [Citation.]” (*Annette F. v. Sharon S., supra*, 119 Cal.App.4th at p. 1167.) It is not enough that the defendant failed to investigate or was negligent in determining the truth or falsity of his statements. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 85; *Annette F., supra*, at p. 1167.) He “must have made the

statement with knowledge that the statement was false or with ‘actual doubt concerning the truth of the publication.’ [Citation.]” (*Annette F.*, *supra*, at p. 1167.)

Because “[t]he existence of actual malice turns on the defendant’s subjective belief as to the truthfulness of the allegedly false statement,” it may be proved by either direct or circumstantial evidence. (*Annette F. v. Sharon S.*, *supra*, 119 Cal.App.4th at p. 1167.) Actual malice may be inferred from circumstantial evidence. (*Christian Research Institute v. Alnor*, *supra*, 148 Cal.App.4th at p. 84.) “Factors such as failure to investigate, anger and hostility, and reliance on sources known to be unreliable or biased ‘may in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication.’ [Citation.] However, any one of these factors, standing alone, may be insufficient to prove actual malice or even raise a triable issue of fact. [Citation.]” (*Annette F.*, *supra*, at p. 1167.) However, the subjective test focuses on the “‘defendant’s attitude toward the truth or falsity of the material published . . . [not] the defendant’s attitude toward the plaintiff.’ [Citation.]” (*Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 257.)

Hoefflin’s original July 24 letter to Tiegel stated that “Dr. Klein ruined [Jackson’s] health, appearance, and helped take his life.” The second letter, to Klein, with a copy sent to Tiegel, similarly accused Klein of ruining Jackson’s health; causing Jackson to be addicted to pain medication and preventing him from entering a drug rehabilitation program; administering intravenous Diprivan (propofol) to Jackson in Klein’s office and instructing others to unsafely administer intravenous Diprivan; and contributing to Jackson’s death.

Klein’s attorney responded that the letter contained false statements, and it would cause severe harm to Klein if broadcast. If the letter or its contents were published, the publication “would be done with malice and with a reckless disregard for the truth.” Hoefflin responded that he had proof that statements Klein made on the Larry King show were false, and he invited Klein to sit down with him “and be interviewed openly covering his medical records and other materials in my possession.”

After this interchange, on August 26, The Sun ran an article which stated that a “[p]anicking Murray rang fellow doc Arnold Klein for advice on what to do as Jacko lay dying.” It also stated that “[b]oth Murray and Klein are being investigated by police over their role in Jacko’s death, which is being treated as homicide.” The article further stated that “last night Dr Steven Hoefflin – who treated Jacko for 25 years – said: ‘Murray definitely called Klein because Klein taught him how to administer propofol. [¶] . . . [¶] Lethal Dr Hoefflin, 63, a respected plastic surgeon who is carrying out his own probe into Jacko’s death, added: ‘Murray would have counted on Klein to be the source of propofol and guide him in its use.’ [¶] Skin specialist Klein is being probed for giving potentially lethal prescription drugs to addict Jacko.”

We agree with the trial court’s finding that “[t]he gist of the statements in Hoefflin’s [July 22] letter is essentially the same as Hoefflin’s alleged statements to *The Sun*.” The letter alleged that Klein administered propofol to Jackson, taught others to do so, and contributed to Jackson’s death. The July 26 article contained essentially these same allegations when it referred to Klein’s provision of propofol to Murray and instruction as to its use. At the time Hoefflin made these statements, he was on notice that they were false.

Additional evidence showed that Hoefflin was on a personal vendetta against Klein based on his belief that Klein had treated Jackson improperly. While he may have had old medical records to support this belief, he added to it claims making Klein responsible in part for Jackson’s death without any actual evidence to back up his claims. He seemed determined to make himself an important player in the investigation into Jackson’s death.

When Boyer told Hoefflin that records in The Sun’s possession showing that Murray called Klein were false, Hoefflin responded, “I know that one of those individuals that Dr. Murray called during those 47 minutes was indeed Dr. Klein.” In his declaration, however, Hoefflin acknowledged that he got the information that Murray called Klein on the day of Jackson’s death, and that Klein showed Murray how to administer propofol, from journalists at The Sun. He did not claim to have seen the

records supposedly in their possession. He stated that he believed Klein was involved in administering Demerol, propofol and tranquilizers based on “reports in the media” and his review of Jackson’s medical records and Klein’s interviews. He pointed to no specific evidence that Klein administered propofol to Jackson, showed Murray how to administer the drug or received a phone call from Murray on the day Jackson died. In the July 24 article in The Sun, however, Hoefflin only stated that he had seen Klein’s 1993 files on Jackson, which showed Klein was giving Jackson Demerol.

Other letters that Hoefflin wrote show that he was on a personal crusade to investigate Jackson’s death and to lay part of the blame on Klein. He saw himself as a crusader for truth against Klein, his attorneys and “Los Angeles Law Enforcement,” who were trying to stop him from revealing the results of his investigation. Hoefflin saw himself as an “established Government Witness”; he was going to release “credible, incriminating evidence” in his book; he requested a congressional investigation into the matter; he contacted the Attorney General in order to stop Klein’s lawsuit.

There was evidence that, while Katherine Jackson initially may have asked Hoefflin to investigate Jackson’s death, she later indicated that she did not want to be involved in the controversy and she had requested that Hoefflin “not make any statements or representations on her behalf or invoke her name in any respect.” He continued to claim that he had her permission to investigate and talk about Jackson’s death.

Both Klein and Hoefflin indicated the relationship between them had soured, even though both gave different reasons for this. Klein believed it was because he had blamed Hoefflin for the problems with Jackson’s appearance, and Hoefflin may have blamed Klein for Jackson’s decision to stop using Hoefflin’s services. Hoefflin claimed the problem between them arose when Klein advised Jackson not to enter a drug rehabilitation program.

Thus, Klein presented evidence to show that Hoefflin was told his statements that Klein administered propofol to Jackson, taught others to do so, and contributed to Jackson’s death were false. Hoefflin nonetheless continued to make these statements and to claim that Murray called Klein on the day of Jackson’s death, relying on statements by

journalists and in the media, as well as unnamed sources. Hoefflin bore anger and hostility toward Klein, which propelled him to launch his crusade against Klein. The evidence is sufficient to support an inference of actual malice. (*Christian Research Institute v. Alnor*, *supra*, 148 Cal.App.4th at p. 84; *Annette F. v. Sharon S.*, *supra*, 119 Cal.App.4th at p. 1167.) Klein met his burden of establishing a probability that he will be able to produce clear and convincing evidence of actual malice. (*Annette F.*, *supra*, at p. 1167.)

D. Additional Contentions

Hoefflin contends that even if Klein made a *prima facie* case of actual malice, he cannot establish a probability of prevailing on his second through sixth causes of action, in that they are “in substance equivalent to” the slander cause of action and therefore are “superfluous and should be dismissed.” (*Couch v. San Juan Unified School Dist.* (1995) 33 Cal.App.4th 1491, 1504; *Kapellas v. Kofman* (1969) 1 Cal.3d 20, 35, fn. 16.) We agree.

Under the Uniform Single Publication Act, “[n]o person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.” (Civ. Code, § 3425.3.) Since all of Klein’s causes of action were based on the same publication, those causes of action other than the first cause of action for slander cannot be maintained. (*Ibid.*) He therefore failed to show a probability of prevailing on those causes of action, and the trial court should have granted Hoefflin’s anti-SLAPP motion as to them. (*City of Cotati v. Cashman*, *supra*, 29 Cal.4th at p. 76; *Drum v. Bleau, Fox & Associates*, *supra*, 107 Cal.App.4th at p. 1018.)

DISPOSITION

The order is reversed as to Klein's second through sixth causes of action, and the trial court is directed to enter a new order granting Hoefflin's anti-SLAPP motion as to those causes of action. As to Klein's first cause of action, the order is affirmed. The parties are to bear their own costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.